

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Birch Solar)
1, LLC for a Certificate of Environmental)
Compatibility and Public Need to Construct a) Case No. 20-1605-EL-BGN
Solar-Powered Electric Generation Facility in)
Allen and Auglaize Counties, Ohio.)

JOINT STIPULATION AND RECOMMENDATION

I. INTRODUCTION

Birch Solar 1, LLC (“Applicant”), the Allen Auglaize Coalition for Reasonable Energy (“Coalition”), the Board of County Commissioners of Auglaize County (“Auglaize County Commissioners”),¹ the Board of Township Trustees of Logan Township (“Logan Township Trustees”),² the International Brotherhood of Electrical Workers, Local Union 32 (“IBEW Local 32”),³ and the Ohio Farm Bureau Federation (“OFBF”) (jointly referred to herein as “Signatory Parties”) submit this Joint Stipulation and Recommendation (“Stipulation”) for adoption by the Board. Ohio Adm.Code 4906-2-24(A) provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties who have signed below, resolving all matters pertinent to the certification and construction of the solar-powered electric generation facility in Shawnee Township, Allen County and Logan Township, Auglaize County, Ohio as proposed in this proceeding.

The Auglaize County Commissioners and the Logan Township Trustees filed motions to intervene in this proceeding on August 19, 2021. The Board of Township Trustees of Shawnee

¹ See Attachment A to the Stipulation.

² *Id.*

³ The Applicant and IBEW Local 32 have entered into a Project Labor Agreement that includes a scope of work for the Birch project.

Township (“Shawnee Township Trustees”) filed a motion to intervene in this proceeding on October 20, 2021. The OFBF and Ryan and Michelle Kalnins (the “Kalnins”)⁴ filed motions to intervene in this proceeding on September 29, 2021. Against Birch Solar, Inc., Linda Beckstedt, Jesse and Kacie Rison, Ryan and Stacy Brenneman, Patricia Buzard, Cheryl Counts, Ann Marie and Christopher Fisher, Deed Hall, Angie and Kenneth McAlexander, Alexandra and Timothy Rostorfer, Susan and William Walters, Althea and Mark Wellman, and Ellen Wieging (“ABS”),⁵ filed a motion to intervene in this proceeding on June 2, 2021. The Coalition and IBEW Local 32 filed motions to intervene in this proceeding on October 1, 2021. The Report of Investigation was issued by the Staff on October 20, 2021 (“Staff Report”). The local public hearing was held on November 4, 2021. The evidentiary hearing commenced on November 30, 2021, and will reconvene on May 18, 2022.

This Stipulation is supported by adequate data and information; represents a just and reasonable resolution of issues in this proceeding; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process to resolve all of the issues in this proceeding. This Stipulation represents the culmination of these discussions, and the Signatory Parties acknowledge that this agreement is amply supported by the record and, thus, entitled to careful consideration by the Board. The Applicant, the Coalition, IBEW Local 32, and the OFBF⁶ recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for the facility. The Auglaize County Commissioners and the Logan Township Trustees, take no position on whether a certificate should

⁴ On April 26, 2022, the Kalnins filed a Motion to Withdraw from this proceeding.

⁵ On May 16, 2022, ABS filed a Motion to Withdraw from this proceeding.

⁶ OFBF’s recommendation is based upon the inclusion of the recommended conditions, and OFBF takes no position on the statutory findings of fact and conclusions of law contained in Part III of this Stipulation.

be issued for the facility, but request the inclusion of the conditions below in any certificate that is issued by the Board. The Auglaize County Commissioners, the Logan Township Trustees, and the OFBF join only in Parts I and II of this Stipulation and shall not be considered to be a signatory with respect to Part III.

II. JOINT RECOMMENDATIONS OF THE SIGNATORY PARTIES

A. Recommended Conditions

The proposed facility is located in Allen and Auglaize Counties, Ohio and its total generating capacity will not exceed 300 megawatts alternating current (“MW”).

The Applicant, the Coalition, IBEW Local 32, and the OFBF recommend that the Board issue the Certificate of Environmental Compatibility and Public Need requested by the Applicant subject to the following conditions. The Auglaize County Commissioners and the Logan Township Trustees recommend, if the Board grants the Certificate of Environmental Compatibility and Public Need, the Certificate be subject to the following conditions.

1. The Applicant shall install the facility, utilize equipment and construction practices, and implement mitigation measures as described in the application and as modified and/or clarified in supplemental filings, replies to data requests, and recommendations in the Staff Report.
2. The Applicant shall conduct a preconstruction conference prior to the commencement of any construction activities. Staff, the Applicant, and representatives of the primary contractor and all subcontractors for the project shall attend the preconstruction conference. The conference shall include a presentation of the measures to be taken by the Applicant and contractors to ensure compliance with all conditions of the certificate, and discussion of the procedures for on-site investigations by Staff during construction. Prior to the conference, the Applicant shall provide a proposed conference agenda for Staff review and shall file a copy of the agenda on the case docket. The Applicant may conduct separate preconstruction conferences for each stage of construction.
3. Within 60 days after the commencement of commercial operation, the Applicant shall submit to Staff a copy of the as-built specifications for the entire facility. If

the Applicant demonstrates that good cause prevents it from submitting a copy of the as-built specifications for the entire facility within 60 days after commencement of commercial operation, it may request an extension of time for the filing of such as-built specifications. The Applicant shall use reasonable efforts to provide as-built drawings in both hard copy and as geographically referenced electronic data.

4. Separate preconstruction conferences may be held for the different phases of civil construction and equipment installation. At least 30 days prior to each preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project design for that phase of construction and mapping in the form of PDF, which the Applicant shall also file on the docket of this case, and geographically referenced data (such as shapefiles or KMZ files) based on final engineering drawings to confirm that the final design is in conformance with the certificate. Mapping shall include the limits of disturbance, permanent and temporary infrastructure locations, areas of vegetation removal and vegetative restoration as applicable, and specifically denote any adjustments made from the siting detailed in the application. The detailed engineering drawings of the final project design for each phase of construction shall account for geological features and include the identity of the registered professional engineer(s), structural engineer(s), or engineering firm(s), licensed to practice engineering in the state of Ohio who reviewed and approved the designs. All applicable geotechnical study results shall be included in the submission of the final project design to Staff.
5. At least 30 days prior to the preconstruction conference, the Applicant shall provide the status (i.e., avoidance, mitigation measures, or capping) of each water well within the project area. The Applicant shall indicate to Staff whether the nearest solar components to any uncapped well within the project area meets or exceeds any applicable minimum isolation distances outlined in Ohio Adm.Code 3701-28-7 and denote the water well on construction drawings. The Applicant shall relocate the solar equipment at least 50 feet from a water well or seal and abandon the water well with landowner consent. The Applicant shall also verify that any abandoned water wells within the project area have been properly decommissioned.
6. At least 30 days prior to each preconstruction conference, the Applicant shall submit to Staff, for review and acceptance, one set of detailed engineering drawings of the final project design for that phase of construction and mapping in the form of PDF, which the Applicant shall also file on the docket of this case, and geographically referenced data (such as shapefiles or KMZ files) based on final engineering drawings to confirm that the final design is in conformance with the certificate. Mapping shall include the limits of disturbance, and permanent and temporary infrastructure locations, and specifically denote any adjustments made from the siting detailed in the application. The detailed engineering drawings shall include the identity of the registered professional engineer(s), structural

engineer(s), or engineering firm(s), licensed to practice engineering in the state of Ohio who reviewed and approved the designs.

7. At least 30 days prior to the preconstruction conference, the Applicant shall submit its Emergency Response Plan on the case docket for Staff review and acceptance. That plan shall include a provision(s) to keep the appropriate representatives of Winona Lake Waterpark and Campground, and appropriate Shawnee Township officials informed of the status of any spills, significant panel damage, and associated repair/remediation schedule.
8. The certificate shall become invalid if the Applicant has not commenced a continuous course of construction of the proposed facility within five years of the date of journalization of the certificate unless the Board grants a waiver or extension of time.
9. As the information becomes known, the Applicant shall file on the public docket the date on which construction will begin, the date on which construction was completed, and the date on which the facility begins commercial operation.
10. Prior to the commencement of construction activities in areas that require permits or authorizations by federal or state laws and regulations, the Applicant shall obtain and comply with such permits or authorizations. The Applicant shall provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant and shall file such permits or authorizations on the public docket. The Applicant shall provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.
11. The certificate authority provided in this case shall not exempt the facility from any other applicable and lawful local, state, or federal rules or regulations nor be used to affect the exercise of discretion of any other local, state, or federal permitting or licensing authority with regard to areas subject to their supervision or control.
12. At least 30 days prior to the preconstruction conference, the Applicant shall file a copy of the grazing plan on the public docket for Staff review and acceptance. The grazing plan shall include: (a) a map of the area to be utilized for sheep grazing; (b) seed mix selected for the site; (c) times of year when sheep grazing would occur; (d) stocking rate; (e) how manure and deceased livestock would be managed; (f) and the Applicant's plan to comply with Condition 11 in relation to sheep grazing.
13. The Applicant shall not commence any construction of the facility until it has as executed an Interconnection Service Agreement and Interconnection Construction Service Agreement with PJM Interconnection, which includes construction, operation, and maintenance of system upgrades necessary to integrate the proposed

generating facility into the regional transmission system reliably and safely. The Applicant shall docket in the case record a letter stating that the Agreement has been signed or a copy of the executed Interconnection Service Agreement and Interconnection Construction Service Agreement.

14. The facility shall be operated in such a way as to assure that no more than 300 MWs would at any time be injected into the Bulk Power System.
15. Prior to commencement of construction, the Applicant shall submit to Staff for approval a solar panel perimeter fence type that is both small-wildlife permeable and aesthetically fitting for a rural location. This condition shall not apply to substation fencing.
16. Prior to commencement of any construction, the Applicant shall prepare a landscape and lighting plan in consultation with a landscape architect licensed by the Ohio Landscape Architects Board that addresses the aesthetic and lighting impacts of the facility with an emphasis on any locations where an adjacent non-participating parcel contains a residence with a direct line of sight to the project area. The plan shall also address potential aesthetic impacts to nearby communities, the travelling public, and recreationalists by incorporating appropriate landscaping measures such as shrub plantings or enhanced pollinator plantings. The plan shall include measures such as fencing, vegetative screening, or good neighbor agreements. Unless alternative mitigation is agreed upon with the owner of any such adjacent, non-participating parcel containing a residence with a direct line of sight to the fence of the facility, the plan shall provide for the planting of vegetative screening designed by the landscape architect to enhance the view from the residence and be in harmony with the existing vegetation and viewshed in the area. The Applicant shall maintain vegetative screening for the life of the facility and the Applicant shall replace any failed plantings so that, after five years, at least 90 percent of the vegetation has survived. The Applicant shall maintain all fencing along the perimeter of the project in good repair for the term of the project and shall promptly repair any damage as needed. All lights in the project solar array must narrowly focus light inward toward the solar equipment, be downlit and shielded, be motion-activated, and result in a maximum horizontal illuminance level of 1 foot-candle. All substation lights must narrowly focus light inward toward the solar equipment, be downlit and fully shielded, be motion-activated, and result in a maximum horizontal illuminance level of 1 foot-candle, except at times of necessary or emergency maintenance to the degree necessary to comply with applicable regulations such as Occupational Safety and Health Administration, National Electrical Code, and the National Electrical Safety Code.. The Applicant shall provide the plan to Staff and file it on the public docket for review and confirmation that it complies with this condition.
17. Construction in upland sandpiper preferred nesting habitat types shall be avoided

during the species' nesting period of April 15 through July 31 unless coordination by the Applicant with the Ohio Department of Natural Resources ("ODNR") allows a different course of action during that period. Absent coordination with the ODNR that allows a different course of action, mapping of these habitat areas shall be provided to the construction contractor along with instructions to avoid these areas during the restricted dates.

18. The Applicant shall have an environmental specialist on site during construction activities that may affect sensitive areas, to be mutually agreed upon by the Applicant and Staff. Sensitive areas which would be impacted during construction shall be identified on a map provided to Staff, and shall include wetlands, streams, and locations of threatened or endangered species. The environmental specialist shall be familiar with water quality protection issues and potential threatened or endangered species of plants and animals that may be encountered during project construction. The environmental specialist mutually agreed upon by Staff and the Applicant shall be authorized to report any issues simultaneously to Staff and the Applicant. To allow time for the Applicant and Staff to respond to any reported issues, the environmental specialist shall have authority to stop construction activities for up to 48 hours if the construction activities are creating unforeseen environmental impacts in the sensitive areas identified on the map.
19. The Applicant shall contact Staff, the ODNR, and the United States Fish and Wildlife Service ("USFWS") within 24 hours if state or federal listed species are encountered during construction activities. Construction activities that could adversely impact the identified plants or animals shall be immediately halted until an appropriate course of action has been agreed upon by the Applicant, Staff and the appropriate agencies.
20. The Applicant shall conduct no in-water work in perennial streams from April 15 through June 30 to reduce impacts to indigenous aquatic species and their habitat, unless coordination efforts with the ODNR allows a different course of action.
21. The Applicant shall construct the facility in a manner that incorporates post construction stormwater management under OHC00005 (Part III.G.2.e, pp. 19-27) in accordance with the Ohio Environmental Protection Agency's Guidance on Post-Construction Storm Water Controls for Solar Panel Arrays.
22. The Applicant shall take steps to prevent establishment and/or further propagation of noxious and invasive weeds identified in Ohio Adm. Code Chapters 901:5-37 and 901:5-30 during implementation of any pollinator-friendly plantings and other revegetation, as well as during construction, operation, and decommissioning. The Applicant shall provide annual proof of weed control for the first four years of operation, with the goal of weed eradication significantly completed by year three of operation. The Applicant will comply with the commitments in the Landscape

and Revegetation Goals filed as the Sixth Supplement to the Application on May 4, 2022.

23. If the Applicant encounters any new listed plant or animal species or suitable habitat of these species prior to construction, the Applicant shall include the location in the final engineering drawings and associated mapping, as required in Condition 8. The Applicant shall avoid impacts to these species and explain how impacts would be avoided during construction.
24. The Applicant shall take steps to prevent establishment and/or further propagation of noxious and invasive weeds identified in Ohio Adm.Code Chapters 901:5-37 and 901:5-30 during implementation of any pollinator-friendly plantings, as well as during construction, operation, and decommissioning. This would be achieved through appropriate seed selection, and annual vegetative surveys. If noxious weeds are found to be present, the Applicant shall remove and treat them with herbicide as necessary and shall follow all applicable state laws regarding noxious weeds.
25. Prior to commencement of construction activities that require transportation permits, the Applicant shall obtain all such permits. The Applicant shall coordinate with the appropriate authority regarding any temporary road closures, road use agreements, driveway permits, lane closures, road access restrictions, and traffic control necessary for construction and operation of the proposed facility. Coordination shall include, but not be limited to, the county engineer, the Ohio Department of Transportation, local law enforcement, and health and safety officials. The Applicant shall detail this coordination as part of a final traffic plan submitted to Staff prior to the preconstruction conference for review and confirmation by Staff that it complies with this condition. The Applicant shall update the traffic plan with any transportation permits received after the preconstruction conference.
26. At least 30 days prior to the start of construction, the Applicant shall file a copy of the final complaint resolution plan on the public docket. At least seven days prior to the start of construction and at least seven days prior to the start of facility operations, the Applicant shall notify via mail affected property owners and tenants including those individuals who were provided notice of the public informational meeting; residences, airports, schools, and libraries, located within one mile of the project are; parties to this case; county commissioners, township trustees, and emergency responders; as well as anyone who has requested updates regarding the project. These notices shall provide information about the project, including contact information and a copy of the complaint resolution plan. The start of construction notice shall include written confirmation that the Applicant has complied with all preconstruction-related conditions of the certificate, as well as a timeline for construction and restoration activities. The start of facility operations notice shall include written confirmation that the Applicant has complied with all construction-

related conditions of the certificate, as well as a timeline for the start of operations. The Applicant shall file a copy of these notices on the public docket. During the construction and operation of the facility, the Applicant shall submit to Staff a complaint summary report by the fifteenth day of April, July, October, and January of each year through the first five years of operation. The report shall include a list of all complaints received through the Applicant's complaint resolution process, a description of the actions taken toward the resolution of each complaint, and a status update if the complaint has yet to be resolved. The Applicant shall file a copy of these complaint summaries on the public docket.

27. General construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., or until dusk when sunset occurs after 7:00 p.m. Impact pile driving shall be limited to the hours between 9:00 a.m. and 7:00 p.m. or until dusk when sunset occurs after 7:00 p.m. Impact pile driving may occur between 7:00 a.m. and 9:00 a.m. if the noise impact at non-participating receptors is not greater than daytime ambient Leq plus 10 dBA. If impact pile driving is required between 7:00 a.m. and 9:00 a.m., the Applicant shall install a noise monitor in a representative location to catalog that this threshold is not being exceeded. Hoe ram operations, if required, shall be limited to the hours between 10:00 a.m. and 4:00 p.m., Monday through Friday. Horizontal Directional Drilling ("HDD") operations if started during general construction activities hours may continue until the completion of the HDD activity. Construction activities that do not involve noise increases above ambient levels at sensitive receptors are permitted outside of daylight hours when necessary. The Applicant shall notify property owners or affected tenants within the meaning of Ohio Adm.Code 4906-3-03(B)(2) of upcoming construction activities including potential for nighttime construction.
28. If the inverters or substation transformer chosen for the project have a higher sound power output than the models used in the noise model, the Applicant shall show that sound levels will not exceed the daytime ambient level plus five dBA at any non-participating sensitive receptor and will submit the information to Staff at least 30 days prior to construction. If noise data is not available from the inverter or transformer manufacturer, an operational noise test may be performed to comply with this condition. The test must be performed on a sunny day in the months of May-August, at a distance equal to the minimum distance from an inverter to a non-participating residence. If the test shows the operational noise level is greater than project area ambient Leq level plus five dBA, additional noise mitigation will be required. This condition is complied with if the test shows the operational noise level is less than project area ambient Leq level plus five dBA.
29. The Applicant shall avoid, where possible, or minimize to the extent practicable, any damage to functioning field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas. Damaged field tile systems shall be promptly repaired or rerouted to at least original

conditions or modern equivalent at the Applicant's expense to ensure proper drainage. However, if the affected landowner agrees to not having the damaged field tile system repaired, they may do so only if: i) the field tile systems of adjacent landowners remain unaffected by the non-repair of the landowner's field tile system; and ii) the damaged field tile does not route directly onto or into an adjacent parcel.

30. The Applicant shall ensure that nearby parcels are protected from unwanted drainage problems due to construction and operation of the project. The Applicant shall ensure this by either:
 - a. documenting benchmark conditions of surface and subsurface drainage systems prior to construction, including the location of laterals, mains, grassed waterways, and county maintenance/repair ditches. The Applicant will make efforts to conduct a perimeter dig utilizing a tile search trench and consult with owners of all parcels adjacent to the property, the county soil and water conservation district, and the county to request drainage system information over those parcels. The Applicant shall consult with the county engineer for tile located in a county maintenance/repair ditch; or
 - b. locating and replacing all field tile drainage systems; or
 - c. in addition to prompt repair, agreeing to compensate parcels owners affected by damage to functioning field tile drainage systems and soils resulting from the construction, operation, and/or maintenance of the facility in agricultural areas for damage to crops or other agricultural activities.
31. Prior to the commencement of construction, the Applicant shall finalize a memorandum of understanding (“MOU”) with the Ohio Historic Preservation Office (“OHPO”) to mitigate for and/or avoid cultural resources with potential adverse effects due to the project and to outline procedures to be followed if previously unidentified sites are discovered during construction. The Applicant shall submit the MOU to Staff and file the MOU on the docket of this case.
32. At least 30 days prior to the preconstruction conference, the Applicant shall provide Staff, for review and acceptance, the final geotechnical engineering report. This shall include a summary statement addressing the geologic and soil suitability.
33. At least 30 days prior to the preconstruction conference, the Applicant shall provide Staff, for review and acceptance, the final Unanticipated Discovery Plan. This shall include detailed plans for remediation of any oil and gas wells within the project area and include incident notification procedures as outlined by the Ohio One Call Emergency Notification System for oil and gas related occurrences.

34. All facility components shall be setback a minimum of 50 feet from any oil and gas well or oil and gas well related features.
35. Any well identified as an unplugged idle or orphan shall be managed in accordance with the applicable laws established by the ODNR Division of Oil and Gas. Construction at an unplugged idle or orphan well site must include set back considerations that would allow well access by standard service equipment, and be at least 14 feet wide leading to the well with the setback established in Condition 34 above.
36. The Applicant shall visually monitor identified historical oil and gas well locations within the project area at least once every ninety days during project construction, operation, and maintenance for the duration of the project term. Any observations that may be indicative of an oil and gas well related release shall be reported as outlined by the Ohio One Call Emergency Notification System.
37. If any changes are made to the facility layout after the submission of final engineering drawings, the Applicant shall provide all such changes to Staff in hard copy and as geographically-referenced electronic data. All changes are subject to Staff review for compliance with all conditions of the certificate, prior to construction in those areas. Staff will endeavor to review and respond within two business days.
38. At least 30 days prior to the preconstruction conference, the Applicant shall submit an updated decommissioning plan and total decommissioning cost estimate without regard to salvage value on the public docket that includes: (a) a provision that the decommissioning financial assurance mechanism include a performance bond where the company is the principal, the insurance company is the surety, and the Ohio Power Siting Board is the obligee; (b) a provision to monitor the site for at least one additional year after completion of decommissioning to ensure successful revegetation and rehabilitation; (c) a timeline of up to one year for removal of the majority of equipment as defined by 60% of the panel and racking equipment quantities, with all decommissioning to be finished within 18 months after the facility ceases operations; (d) a provision where the performance bond is posted prior to the commencement of construction; (e) a provision that the performance bond is for the total decommissioning cost and excludes salvage value; (f) a provision to coordinate repair of public roads damaged or modified during the decommissioning and reclamation process; (g) a provision that the decommissioning plan be prepared by a professional engineer registered with the state board of registration for professional engineers and surveyors; and (h) a provision stating that the bond shall be recalculated every five years by an engineer retained by the Applicant.

39. At the time of solar panel end of life and if the Applicant is unable to recycle the panels, retired panels marked for disposal shall be sent to an engineered landfill with various barriers and methods designed to prevent leaching of materials into soils and groundwater.
40. At least 30 days prior to the preconstruction conference, the Applicant shall submit proof that the owners of the helicopter pad located at the northwest corner of the intersection of Spring and Collett Streets in Lima, Ohio have been notified of the proposed solar facility and any impacts that the solar facility and 345 kV gen-tie transmission line will have on the helicopter pad operations.

B. Exhibits

Subject to the terms and conditions of this Stipulation, the Applicant, the Coalition, the Auglaize County Commissioners, the Logan Township Trustees, IBEW Local 32, and the OFBF agree, stipulate, and recommend that the following exhibits submitted to this docket be marked and admitted into the record of this proceeding:

1. Applicant Exhibit 1: Application filed on February 12, 2021.
2. Applicant Exhibit 2: Application Large Exhibit A filed on February 17, 2021.
3. Applicant Exhibit 3: First Supplement to the Application filed on March 25, 2021.
4. Applicant Exhibit 4: Second Supplement to the Application filed on March 31, 2021.
5. Applicant Exhibit 5: Third Supplement to the Application filed on April 5, 2021.
6. Applicant Exhibit 6: Fourth Supplement to the Application filed on October 5, 2021.
7. Applicant Exhibit 7: Updated Second Supplement to the Application filed on February 9, 2022.
8. Applicant Exhibit 8: Fifth Supplement to the Application filed on February 17, 2022.
9. Applicant Exhibit 9: Sixth Supplement to the Application filed on May 4, 2022.

10. Applicant Exhibit 10: Response to First Data Request filed on March 12, 2021
11. Applicant Exhibit 11: Response to Second Data Request filed on April 6, 2021.
12. Applicant Exhibit 12: Response to Third Data Request filed on April 9, 2021.
13. Applicant Exhibit 13: Response to Fourth Data Request filed on April 12, 2021.
14. Applicant Exhibit 14: Response to Fifth and Sixth Data Requests filed on April 28, 2021.
15. Applicant Exhibit 15: Response to Seventh Data Request filed on June 7, 2021.
16. Applicant Exhibit 16: Response to Eighth Data Request filed on June 8, 2021.
17. Applicant Exhibit 17: Response to Ninth Data Request filed on September 27, 2021.
18. Applicant Exhibit 18: Response to Tenth Data Request filed on October 14, 2021.
19. Applicant Exhibit 19: Response to Eleventh Data Request filed on October 14, 2021.
20. Applicant Exhibit 20: Response to Twelfth Data Request filed on October 15, 2021.
21. Applicant Exhibit 21: Response to Thirteenth Data Request filed on October 18, 2021.
22. Applicant Exhibit 22: Supplemental Response to Tenth Data Request filed on December 30, 2021.
23. Applicant Exhibit 23: Certificate of Service of the November 20 and 23, 2020 Public Information Meetings, notice on property owners and entities filed on November 3, 2020, in accordance with Ohio Adm.Code 4906-3-03.
24. Applicant Exhibit 24: Proof of Publication of the November 20 and 23, 2020 Public Information Meetings in the *Lima News and Wapakoneta Daily News* filed on November 18, 2020, in accordance with Ohio Adm.Code 4906-3-03.

25. Applicant Exhibit 25: Certificate of Service of the August 19, 2021 Third Public Information Meeting, notice on property owners and entities filed on August 6, 2021, in accordance with Ohio Adm.Code 4906-3-03 and the ALJ's July 7, 2021 Entry.
26. Applicant Exhibit 26: Proof of Publication of the August 19, 2021 Third Public Information Meetings in the *Lima News and Wapakoneta Daily News* filed on August 18, 2021, in accordance with Ohio Adm.Code 4906-3-03 and the ALJ's July 7, 2021 Entry.
27. Applicant Exhibit 27: Certificate of Service of the accepted, complete application on local public officials and libraries filed on August 5, 2021, in accordance with Ohio Adm.Code 4906-3-07.
28. Applicant Exhibit 28: Proof of Service and Proof of Publication in the *Lima News and Wapakoneta Daily News* of the procedural schedule, in accordance with the ALJ's August 13, 2021 Entry, filed on September 3, 2021.
29. Applicant Exhibit 29: Proof of Second Service and Proof of Second Publication in the *Lima News and Wapakoneta Daily News* of the procedural schedule, in accordance with the ALJ's August 13, 2021 Entry, filed on November 1, 2021.
30. Joint Exhibit 1: The May 16, 2021, Stipulation signed on behalf of the Applicant, the Coalition, the Auglaize County Commissioners, the Logan Township Trustees, IBEW Local 32, and the OFBF.

C. Other Terms of the Stipulation

1. This Stipulation is expressly conditioned upon its adoption by the Board without material modification. Each Signatory Party has the right, in its sole discretion, to determine whether the Board's approval of this Stipulation constitutes a "material modification" thereof. If the Board rejects or materially modifies all of any part of this Stipulation, any Signatory Party shall have the right to apply for rehearing. If the Board does not adopt the Stipulation without material modification upon rehearing, or if the Board makes a material modification to any Order adopting the Stipulation pursuant to any reversal, vacation and/or remand by the Supreme Court of Ohio, then within 30 days of the Board's Entry on Rehearing or Order on Remand any Signatory Party may withdraw from the Stipulation by filing a notice with the Board ("Notice of Withdraw"). No Signatory Party shall file a Notice of Withdraw without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement achieves such an outcome, the Signatory Parties will file the new agreement for the Board's review and approval. If the discussions to achieve an outcome that substantially

satisfies the intent of the Stipulation are unsuccessful, and a Signatory Party files a Notice of Withdrawal, then the Board will convene an evidentiary hearing to afford the Signatory Party the opportunity to contest the Stipulation by presenting evidence through witnesses, to cross examine witnesses, to present rebuttal testimony, and to brief all issues that the Board shall decide based upon the record and briefs. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, then some or all of the Signatory Parties shall submit the amended Stipulation to the Board for approval after hearing if necessary.

2. The Signatory Parties agree and recognize that this Stipulation has been entered into only for the purpose of this proceeding. Each party agrees not to assert against another party in any proceeding before the Board or any court, other than in a proceeding to enforce the terms of this Stipulation, that party's participation in this Stipulation as support for any particular position on any issue. Each party further agrees that this Stipulation carries no factual or legal precedent on any issue. The parties request that the Board recognize that its use of this Stipulation in any proceeding other than this proceeding is contrary to the intentions of the parties in entering into this Stipulation.

III. RECOMMENDED FINDINGS

The Signatory Parties agree that the record in this case, provided the Board approves the conditions in this Stipulation, contains sufficient probative evidence for the Board to find and determine, as findings of fact and conclusions of law, that:

A. Recommended Findings of Fact

1. The Applicant is an affiliate of Lightsource US and is licensed to do business in the state of Ohio.
2. The facility qualifies as a major utility facility as defined in R.C. 4906.01(B)(1).
3. On November 3, 2020, the preapplication notification letter was filed informing the Board of the public information meetings in this proceeding. Notice of the public information meetings was served on county and township officials and agencies, property owners, local first responders, the local school district, and the local library, and published in the *Lima News and Wapakoneta Daily News*. The public information meetings were held, as scheduled, on November 20 and 23, 2020.

4. The Applicant formally submitted its application for a Certificate of Environmental Compatibility and Public Need on February 12, 2021.
5. Notice of the third public information meeting was served on county and township officials and agencies, property owners, local first responders, the local school district, and the local library, and published in the *Lima News and Wapakoneta Daily News*. The third public information meeting was held, as scheduled, on August 19, 2021.
6. ABS filed a motion for intervention on June 2, 2021.
7. The Auglaize County Commissioners and the Logan Township Trustees filed motions for intervention on August 19, 2021.
8. The OFBF and the Kalnins filed motions for intervention on September 29, 2021.
9. Coalition and IBEW Local 32 filed motions for intervention on October 1, 2021.
10. The Shawnee Township Trustees filed a motion for intervention on October 20, 2021.
11. On July 14, 2021, the Staff filed a letter stating that it had received sufficient information to begin its review of the Application as supplemented.
12. On August 5, 2021, the Applicant filed a certificate of service indicating that a copy of the Application was served on local public officials and libraries.
13. On August 10, 2021, the Applicant filed notice that the Application fee had been submitted.
14. By entry issued on August 13, 2021, the ALJ established the procedural schedule and scheduled the local public and evidentiary hearings for November 4 and November 30, 2021, respectively.
15. On September 3 and November 1, 2021, the Applicant filed proof that the first and second notices of the procedural schedule were served and published in the *Wilmington News Journal*.
16. The Staff Report was filed on October 20, 2021.
17. The public hearing was held on November 4, 2021.

18. On May 16, 2022, the Applicant, the Coalition, the Auglaize County Commissioners, the Logan Township Trustees, IBEW Local 32, and the OFBF filed the Stipulation.
19. The adjudicatory hearing commenced on November 30, 2021, and will reconvene on May 18, 2022.
20. The basis of need, as specified under R.C. 4906.10(A)(1), is not applicable to this generating facility project.
21. Adequate data on the project has been provided to determine the nature of the probable environmental impact, as required by R.C. 4906.10(A)(2).
22. Adequate data on the project has been provided to determine that the facility described in the application represents the minimum adverse environmental impact, considering the available technology and nature and economies of the various alternatives, and other pertinent considerations, as required by R.C. 4906.10(A)(3).
23. Adequate data on the project has been provided to determine that, because the project is an electric generation facility, the proposed electric generating facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the state of Ohio and interconnected utility systems, and that the facility will serve the interests of electric system economy and reliability, and the requirements of R.C. 4906.10(A)(4) are met.
24. Adequate data on the project has been provided to determine that, to the extent that any of them are applicable, the solar-powered generation facility will comply with the requirements in the R.C. regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all regulations thereunder, as required by R.C. 4906.10(A)(5).
25. Adequate data on the project has been provided to determine that the facility will serve the public interest, convenience, and necessity, as required by R.C. 4906.10(A)(6).
26. Adequate data on the project has been provided to determine what the facility's impact will be on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site of the proposed facility, as required by R.C. 4906.10(A)(7).
27. Adequate data on the project has been provided to determine that the facility as proposed incorporates maximum feasible water conservation practices

considering available technology and the nature and economics of the various alternatives, as required by R.C. 4906.10(A)(8).

28. The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

B. Recommended Conclusions of Law

1. The Applicant is a "person" under R.C. 4906.01(A).
2. The proposed facility is a major utility facility as defined in R.C. 4906.01(B)(1).
3. The application complies with the requirements of Ohio Adm.Code Chapter 4906-3.
4. The requirement for the need for the facility under R.C. 4906.10(A)(1) is inapplicable.
5. The record establishes the nature of the probable environmental impact from construction, operation, and maintenance of the facility under R.C. 4906.10(A)(2).
6. The record establishes that the facility, if conditioned in the certificate as recommended by the Signatory Parties, represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations under R.C. 4906.10(A)(3).
7. The record establishes that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the state of Ohio and interconnected utility systems, and will serve the interests of electric system economy and reliability, as required by R.C. 4906.10(A)(4).
8. The record establishes, as required by R.C. 4906.10(A)(5), that, to the extent that any of them are applicable, construction of the proposed facility will comply with the requirements in the R.C. regarding air and water pollution control, withdrawal of waters of the state, solid and hazardous waters, and air navigation, and all rules and standards adopted under the relevant Chapters of the R.C.
9. The record establishes that the facility, if conditioned in the certificate as recommended by the Signatory Parties, will serve the public interest, convenience, and necessity under R.C. 4906.10(A)(6).
10. The facility's impact on the viability as agricultural land of any land in an existing agricultural district has been determined under R.C. 4906.10(A)(7).

11. The record establishes that the facility would incorporate maximum feasible water conservation practices under R.C. 4906.10(A)(8).
12. Based on the record, the Signatory Parties recommend that the Board issue a Certificate of Environmental Compatibility and Public Need for construction, operation, and maintenance of the facility, which includes the conditions in the Staff Report, as presented and modified by this Stipulation

The undersigned hereby stipulate and agree and they represent that they are authorized to enter into this Joint Stipulation and Recommendation.

Respectfully submitted on behalf of,

BIRCH SOLAR 1, LLC

By: /s/ Christine M.T. Pirik
Christine M.T. Pirik
(Counsel of Record)
Matthew McDonnell
Jonathan R. Secrest
David A. Lockshaw, Jr.
DICKINSON WRIGHT PLLC
180 East Broad Street, Suite 3400
Columbus, Ohio 43215

**ALLEN AUGLAIZE COALITION FOR
REASONABLE ENERGY**

By: /s/ John A. Heer per email 5/16/22 CMTP
John A. Heer
(Counsel of Record)
Fair Shake Environmental Legal Services
600 Superior Avenue East, Suite 1300
Cleveland, Ohio 44114

Eric L. Christensen
Beveridge & Diamond PC
600 University Street, Suite 1601
Seattle, Washington 98101

**BOARD OF COUNTY COMMISSIONERS
OF AUGLAIZE COUNTY, OHIO AND
BOARD OF TRUSTEES, LOGAN
TOWNSHIP, AUGLAIZE COUNTY**

The Auglaize County Commissioners and Logan Township Trustees take no position on whether a certificate should be issued for the facility, but requests the inclusion of the conditions stated above in any certificate that is issued by the Board. The Auglaize County Commissioners and Logan Township Trustees join only in Parts I and II of this Stipulation and shall not be considered to be a signatory with respect to Part III.

By: /s/ Edwin A. Pierce per email 5/16/22 CMTP
Edwin A. Pierce
Auglaize County Prosecuting Attorney
201 Willipie Street, Suite 309
Wapakoneta, Ohio 45895

THE OHIO FARM BUREAU FEDERATION

By: /s/ Amy Milam per email 5/16/22 CMTP

Chad A. Endsley

Chief Legal Counsel

Amy M. Milam

Leah F. Curtis

OHIO FARM BUREAU FEDERATION

280 North High Street

P.O. Box 182383

Columbus, Ohio 43218

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION
32**

By: /s/ Robert Dove per email 5/16/22 CMTP

Robert Dove

Kegler Brown Hill + Ritter Co., L.P.A.

65 East State Street, Suite 1800

Columbus, Ohio 43215

Stipulation Attachment A
Board of Commissioners Auglaize County and
Board of Trustees Logan Township Letter

May 12, 2022



Members:

*David Bambauer
John N. Bergman
Douglas A. Spencer*

*Board of County Commissioners
209 S. Blackhoof St. - Room 201
Wapakoneta, Ohio 45895-1972
Phone: 419-739-6710 Fax: 419-739-6711
e-mail: commissioners@auglaizecounty.org*

MAY 12, 2022

Ohio Power Siting Board

Re: Birch Solar – Case No. 20-1605-EL-BGN


Dear Sir or Madam:

The Board of Auglaize County Commissioners and the Logan Township Trustees (collectively referred to herein as the “**County**”) understands that the authority to determine whether or not there is merit to the Project and whether or not to issue a certificate to Birch Solar 1, LLC (“**Birch**”) for its proposed 300 MW solar project in Auglaize and Allen Counties (the “**Project**”), rests with the Ohio Power Siting Board (the “**Board**”).


However, the County offers the following:

1. The County requests that should a certificate be issued by the Board then the conditions contained in the stipulations be included in any certificate issued.
2. The County has negotiated and executed a Road Use, Repair, Maintenance and Drainage Agreement with Birch Solar 1, LLC dated May 5, 2022.
3. With the knowledge that Birch’s Project would be treated as “grandfathered” under Senate Bill 52 (“**SB 52**”), the County passed a resolution restricting all unincorporated areas of the County from large wind and solar development under the authority granted to the County in SB 52.
4. But for the “grandfathered” status, Birch’s Project would be restricted under the authority given to the County under SB 52.

Sincerely,


John N. Bergman


Douglas A. Spencer


David Bambauer

Auglaize County Board of Commissioners

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

5/16/2022 4:44:58 PM

in

Case No(s). 20-1605-EL-BGN

Summary: Stipulation - Joint Stipulation and Recommendation electronically filed
by Christine M.T. Pirik on behalf of Birch Solar 1, LLC